

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of J.S., T.J., M.J., and D.G., Minors.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

SHERITA JOHNSON,

Respondent-Appellant,

and

DAVID GRAY,

Respondent.

UNPUBLISHED

February 21, 2003

No. 241924

Genesee Circuit Court

Family Division

LC No. 98-109906-NA

Before: Markey, P.J., and Smolenski and Meter, JJ.

PER CURIAM.

Respondent-appellant appeals by right from the trial court order terminating her parental rights to the minor children under MCL 712A.19b(3)(g), (i), and (j). We affirm.

Respondent-appellant demanded a jury for the adjudication portion of these proceedings. She now contends that the trial court violated her constitutional right to due process by dismissing the jury after jurisdiction had been assumed over all of the children because of the children's fathers' admissions. Respondent-appellant has waived this issue for appellate consideration because her trial counsel consented to the dismissal of the jury. A party "may not waive objection to an issue before the trial court and then raise it as an error" on appeal. *People v Carter*, 462 Mich 206, 214; 612 NW2d 144 (2000). Moreover, no error occurred. Once the court obtained jurisdiction over the children, the jury had no further function, and the trial court correctly proceeded to the dispositional phase of the proceeding. *In re CR*, 250 Mich App 185, 205; 646 NW2d 506 (2002).

Because the allegations against respondent-appellant were not the basis for the adjudication, petitioner was required to prove them in the termination phase of the proceeding by means of legally admissible evidence. MCR 5.974(E)(1); *In re CR, supra* at 205-206. The allegations against respondent-appellant consisted of the prior termination of respondent-

appellant's parental rights to two of the children's half siblings, her failure to provide proper care and custody, and her physical abuse of the children by whipping them with an extension cord and belt.

The trial court abused its discretion in admitting evidence of the children's hearsay statements regarding the whippings. Statements made on the record indicate that the trial court judge and all of the attorneys were of the mistaken opinion that the rules of evidence did not apply in the dispositional phase. This is generally the rule, unless, as in this case, the allegations are new and different from the ones forming the basis for jurisdiction. However, other legally admissible evidence, such as photographs and caseworkers' direct observations did support the fact that J.S. and T.J. bore marks on their bodies that could only have been sustained after the children were in respondent-appellant's care. Additionally, the other allegations against respondent-appellant were established by legally admissible evidence. Because ample legally admissible evidence was introduced to support the allegations against respondent-appellant, the trial court's improper admission of the children's hearsay statements does not require reversal. *In re Snyder*, 223 Mich App 85, 92-93; 566 NW2d 18 (1997).

The trial court did not clearly err in finding that the statutory grounds for termination were established by clear and convincing evidence. MCR 5.974(I); *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). The evidence showed that respondent-appellant was able to provide proper care and custody of the children only when assisted by in-home services. The evidence was uncontroverted that respondent-appellant's parental rights to the children's two half siblings were terminated in 1995 and 1996, and that respondent-appellant had been involved in protective services proceedings since 1993. By the year 2001, respondent-appellant was still unable to independently provide proper care for the children. The evidence showed that when the children were returned to protective custody, respondent-appellant's home was dirty, the children were dirty and ill supervised, and that unsafe persons had been present in the home, such as a suspect in a police shooting and a violent boyfriend, thus indicating that attempts to rehabilitate respondent-appellant had been unsuccessful. Therefore, the trial court correctly concluded that there was a likelihood of harm to the children should they be returned to respondent-appellant.

Finally, the trial court did not err in finding that the evidence did not indicate that termination of respondent-appellant's parental rights was not in the children's best interests. MCL 712A.19b(5); *In re Trejo*, *supra*. Respondent-appellant's love for the children was apparent, as was J.S.'s and T.J.'s anguish and anger at being separated from respondent-appellant. However, the trial court correctly concluded that the children needed stability, which respondent-appellant had not been able to independently provide. Respondent-appellant also expressed a desire to relinquish custody of her unborn child. The evidence did not show that termination of parental rights was clearly not in the children's best interests.

We affirm.

/s/ Jane E. Markey
/s/ Michael R. Smolenski
/s/ Patrick M. Meter